BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION

DONNA M. PETERS	)	
Claimant	)	
VS.	)	
	)	Docket No. 1,040,954
RESOURCE CENTER FOR	)	
INDEPENDENT LIVING, INC.	)	
Respondent	)	
AND	)	
	)	
ACE AMERICAN INSURANCE COMPANY	)	
Insurance Carrier	)	

ORDER

Respondent and its insurance carrier appealed the July 30, 2008, preliminary hearing Order entered by Administrative Law Judge Steven J. Howard.

ISSUES

Claimant was injured on June 14, 2007, in a car accident in Joplin, Missouri. In awarding claimant both medical benefits and temporary total disability benefits, Judge Howard implicitly found claimant's accident arose out of and in the course of her employment with respondent.

Respondent and its insurance carrier (respondent) contend Judge Howard erred and the July 30, 2008, Order should be reversed. They argue claimant's accident did not arise out of and in the course of her employment with respondent. More specifically, they argue the accident occurred during a personal trip that was unrelated to claimant's job as a personal care attendant for her mother. Respondent's principal argument is summarized, as follows:

> Here, although Claimant testified that she had previously transported her mother to her mother's own doctor's appointments as part of her job as a personal assistant, there is absolutely no evidence that Claimant was required or expected to chauffeur her client (her mother) for personal or social trips, nor was she required to provide care for any other person (i.e. Mr. Crabtee). In fact, Claimant was not even driving her own vehicle at the time of the accident. Considering these circumstances, it

> appears that Claimant's act of driving Mr. Crabtree and her mother to Joplin, Missouri was personal in nature and not at all related to her job duties as a personal care attendant for her client. Argued differently, Claimant's job duties did not create any condition or obligation for Claimant to act as a chauffeur for her mother's personal trips.[1]

And in the event the trip to Joplin had a dual purpose, respondent argues the dual purpose rule does not make this accident compensable under the Workers Compensation Act because the trip would not have been undertaken had the personal errand been abandoned.

Conversely, claimant contends the preliminary hearing Order should be affirmed. Claimant argues the accident occurred while she was providing personal care services to her mother, respondent's client, and that she was paid for that time. More specifically, claimant contends it was necessary for her to accompany her mother to Joplin as her personal care attendant. Claimant argues she was not in Joplin because of her personal benefit and her mother's need for personal care services did not suddenly terminate upon leaving home. Claimant argues, in part:

> Claimant went with Ms. O'Brien, respondent's client, to Joplin, Missouri to accompany a Mr. Crabtree to his physician's appointment. Mr. Crabtree shared the client's home and was the client's caregiver at night and on weekends. The client was concerned about Mr. Crabtree and wanted to accompany him to the appointment. Because Ms. O'Brien, respondent's client, was traveling to Joplin, it was necessary for claimant to accompany her on the trip as her personal care attendant. PH at 8, 34.
>
> Claimant was only in Joplin because respondent's client chose to go there. Claimant was not on an errand for her personal benefit. If Ms. O'Brien had chosen instead to remain in her home on June 14, 2007, the claimant would have been on the clock providing services as a personal care attendant at the client's home. PH at 9.
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> Claimant routinely provided food for the client to eat prior to giving her scheduled medications. Claimant testified that she was providing personal care for the client immediately before the collision. They had gone to a restaurant to obtain food for respondent's client so that she could take her medications. She needed to eat before taking her medications. Ms. O'Brien's needs for personal care

[1] Respondent's Brief at 3 (filed Aug. 18, 2008).

services did not suddenly cease when she left the confines of her home. PH at 10-11.[2]

The only issue before the Board on this appeal is whether claimant's accident arose out of and in the course of her employment with the respondent.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record compiled to date and considering the parties' arguments, the undersigned Board Member finds as follows:

In 1998, claimant began working for respondent as a personal care attendant. Respondent assigned claimant to care for her mother, Donna O'Brien, who has emphysema, Parkinson's disease, poor vision, liver problems, and poor mobility. Claimant, as her mother's personal care attendant, cared for and assisted her mother approximately 40 hours per week. Another one of respondent's employees, Lawrence Crabtree, cared for Ms. O'Brien during the evenings and on weekends. Claimant's normal work hours were from 8 a.m. through 4 p.m.

On June 14, 2007, claimant drove Mr. Crabtree and her mother to Joplin, Missouri. Claimant testified that Mr. Crabtree had a medical appointment in Joplin and her mother wanted to go as she was concerned about his health. Claimant also represented that wherever her mother needed to go, claimant took her. Moreover, claimant testified that Mr. Crabtree would not have been able to tend to her mother on that occasion.

At approximately 11 a.m. on June 14, 2007, the car claimant was driving was struck broadside by a car belonging to the Joplin Police Department after claimant failed to stop at a red light. The impact fractured claimant's right arm, which required numerous plates and screws to repair. The accident occurred on Thursday; the following Monday claimant notified respondent of the accident.

Claimant's testimony is uncontradicted that on previous occasions she had provided personal care services to her mother outside of the home when she had driven her mother to medical appointments, some of which were in other communities.

Following the accident and right arm surgery, claimant was off work until approximately November 19, 2007, when she resumed caring for her mother. But in January 2008 claimant experienced problems with one of the plates in her right arm, which required a second surgery that was performed in late March 2008. Consequently, claimant

[2] Claimant's Brief at 2, 3 (filed Aug. 19, 2008).

has been off work since sometime in February 2008. Claimant's surgeon now recommends therapy.

An employer is liable to pay compensation to an employee where the employee incurs personal injury by accident arising out of and in the course of employment.[3] "Whether an accident arises out of and in the course of the worker's employment depends upon the facts peculiar to the particular case."[4]

The two phrases arising "out of" and "in the course of" employment, as used in the Kansas Workers Compensation Act, have separate and distinct meanings; they are conjunctive and each condition must exist before compensation is allowable.

> The phrase "out of" employment points to the cause or origin of the accident and requires some causal connection between the accidental injury and the employment. An injury arises "out of" employment when there is apparent to the rational mind, upon consideration of all the circumstances, a causal connection between the conditions under which the work is required to be performed and the resulting injury. Thus, an injury arises "out of" employment if it arises out of the nature, conditions, obligations, and incidents of the employment. The phrase "in the course of" employment relates to the time, place, and circumstances under which the accident occurred and means the injury happened while the worker was at work in the employer's service.[5]

And the Act is to be liberally construed to bring employers and employees within the provisions of the Act but those provisions are to be applied impartially to both.[6]

The undersigned affirms the Judge's implicit finding that claimant's accident arose out of and in the course of her employment with respondent. The accident occurred during claimant's normal working hours. Moreover, accompanying Ms. O'Brien on ventures outside the home is an obligation and incident of claimant's job of providing personal care services. Consequently, the July 30, 2008, Order should be affirmed.

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[3] K.S.A. 2006 Supp. 44-501(a).

[4] *Kindel v. Ferco Rental, Inc.*, 258 Kan. 272, 278, 899 P.2d 1058 (1995).

[5] *Id.* at 278.

[6] K.S.A. 2006 Supp. 44-501(g).

By statute, preliminary hearing findings and conclusions are neither final nor binding as they may be modified upon a full hearing of the claim.[7] Moreover, this review of a preliminary hearing Order has been determined by only one Board Member, as permitted by K.S.A. 2007 Supp. 44-551(i)(2)(A), unlike appeals of final orders, which are considered by all five members of the Board.

WHEREFORE, the undersigned affirms the July 30, 2008, preliminary hearing Order entered by Judge Howard.

IT IS SO ORDERED.

Dated this ____ day of September, 2008.

KENTON D. WIRTH
BOARD MEMBER

c: Daniel L. Smith, Attorney for Claimant
Jennifer Arnett, Attorney for Respondent and its Insurance Carrier
Steven J. Howard, Administrative Law Judge

[7] K.S.A. 44-534a.